

DRAFT

**STATE ADVISORY COUNCIL ON THE
EDUCATION OF CHILDREN WITH DISABILITIES**

**October 17, 2007
Indiana Department of Education
Indianapolis, IN**

ADVISORY COUNCIL MEMBERS PRESENT:

B. Marra, G. Bates, R. Burden, D. Downer, C. Endres, K. Farrell, Jodee Crace (representing D. Geeslin), R. Kirby, G. McAloon, J. Nally, M. Ramos, C. Shearer, S. Tilden

ADVISORY COUNCIL MEMBERS NOT PRESENT:

J. Hammond, C. H. Hansen, B. Henson, M. Johnson, B. Kirk, B. Lewis, K. Mears, D. Schmidt, J. Swaim, J. Swiss, T. Wyatt, S. Yoder

INDIANA DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:

K. Bassett, N. Confer, S. Knoth, B. Reynolds T. Rinehart

VISITORS:

Loui Lord Nelson (R.A.I.S.E.), Dee Kempson (IDOE) Amanda Snobarger (IDOE), Debra Liebrich (ISD), Louise Fitzpatrick (ISD), Terri Waddell-Motter (ISD), Kathryn Lee (Indiana Civil Rights Commission), Rylind Rodgers (Family Voices, Indiana/Parent), Liz Freeman Floyd (Autism Coalition)

INTERPRETERS:

Rebecca Madigan
Randy Nicolai

MEETING

K. Farrell opened the meeting at 9:10 a.m. She requested a point of privilege since there was not a quorum present. Greg McAloon was welcomed as the newest member of the Council (replacing Lilia Teninty). He is employed at DDARS and has three children (each of whom is a student with exceptional learning needs).

K. Farrell then introduced Jodee Crace who was representing David Geeslin. She also made public comment on behalf of the Indiana School for the Deaf (ISD).

J. Nally moved to accept the minutes as a correct document. S. Tilden seconded. Motion carried.

The minutes from the October 5, 2007 meeting was approved as a correct document.

Article 7 Revisions Comments from Public

J. Crace addressed the Council with regard to proposed changes to 511 IAC 7-41-4. C. Endres asked for clarification on the term 'adversely affects'. J. Crace indicated that it sounds as if it is very serious and it really is not. As long as they have access to the world through their eyes and hands not all children need hearing aids to communicate.

Article 7 Revisions

Discussion

RULE 35 PROGRAM AND PLANNING

511 IAC 7-35-3 ~~Technical assistance and Training~~ Supports for public agency personnel

B. Marra indicated from the comments that were received from the public forums that it was decided to leave the language as it is in the Federal rule with the exception of the changes of 'technical assistance and training' to 'supports'. This language would provide training for personnel (i.e. bus drivers) that are around the child to be trained to support them. S. Tilden concurred with the proposed changes. K. Farrell asked for clarification regarding the language at (2) 'intended outcomes'. B. Marra gave an example to a complaint that was received by the DEL. B. Marra stated that the language focuses more on the student rather than the label. In some cases, there may not need to be additional supports.

K. Farrell asked if the Council could table 511 IAC 7-35-3 when there is a quorum.

Rule 36 GENERAL ADMINISTRATION OF PROGRAMS

511 IAC 7-36-5: Early childhood

B. Marra indicated that the language is the same as the Council reviewed previously and the same language shared via the survey and public forums. C. Endres asked for clarification to previous discussion on the 12.5 hours.

R. Burden asked with regard to the definition of case load at (b). B. Marra defined case load under 511 IAC 7-32-13. J. Nally asked whether the concern is that without hard data there is a fear that the schools will increase class sizes. B. Marra said that yes, that is basically what he has heard, but the schools recognize these terms and are trying to do the right thing.

R. Burden stated that he has heard the concerns as to what the parents do if they do disagree with the hours of services. He said that he agrees with the language but does not know how it will play out for the future. He shared that he believes the greater the structure that is provided, the more benefit to students. K. Farrell said that this language puts the responsibility back where it belongs. With regard to case load she feels that sometimes there are more aides in the classroom than students. C. Endres asked if K. Farrell had suggestions on how the language should reflect those concerns. K. Farrell stated that she agrees with the language as written as it creates greater responsibility to provide the needs of the child.

C. Endres asked if there was a disagreement if the issue would go to due process. B. Marra said that it would most likely go to a complaint proceeding. S. Tilden asked what if a child goes through a number of years and has a fair number of hours then the school needs to cut down the hours to give to another student. K. Farrell indicated that it would be a case conference decision.

B. Marra asked if the Council wanted additional information. J. Nally said that he thought the language was fine. R. Kirby stated that she would share the comments that About Special Kids have put together with the SAC.

K. Farrell suggested that Council table the rule until a quorum is present.

Rule 37 Procedural Safeguards

~~511 IAC 7-37-2 Notice by electronic mail~~

B. Marra stated that the removal of this wording was because of privacy issues and possible release of personal identifiable information.

Rule 38 CONFIDENTIALITY OF INFORMATION

511 IAC 7-38-1 Access to and disclosure of educational records

R. Buren had concerns with the language. B. Marra stated that it is cumulative information not personal information.

K. Farrell said that the Council needs to be cautious as to repeating language that is already in another rule.

The Council reviewed the language as revised with subsection (n) removed.

RULE 40 IDENTIFICATION AND EVALUATION

511 IAC 7-40-2 Integrated and focused system to support student success

B. Marra said that additional language was added at (b)(4) and (c). It is included in the language that the school is obligated to move forward with an educational evaluation if no progress is being made and that evaluation must occur within 15 instructional days. He shared with the Council that some states are adding a timeframe to Response to Intervention (RTI) but cautioned that he feels that the length of time needs to be considered for the individual student. He asked the Council whether they thought that the timeframe should be left up to the parent and the LEA or if there should be a set length of time. G. Bates asked with regard to section (c), would the time frame be the same if the parent requests the evaluation. B. Marra said that the language could be changed but must be read in collaboration with subsection 2(b)(4). An expedited evaluation is 20 days so we just took 5 days off since the school should be collecting information prior to reaching this point. K. Farrell said that she supports the RTI process but has concerns with embedding it into a rule. B. Marra said that the majority of the RTI reference is made in Article 4. R. Burden indicated that he would like to see some type of clause that dictates if there isn't any progress the automatic assumption does not become that this must be a child with a specific learning disability. K. Farrell asked for clarification. Is the intent that if you initiate the interventions, no progress is being made, and they do not want a referral for special education to be initiated? B. Marra answered that yes, it may be that the interventions were not implemented with fidelity or the intervention may not even have been the appropriate intervention. If 20% to 30% of the students are being referred there may be another issue that should be addressed. C. Shearer asked if Dee Kempson could discuss what is happening at MSD of Pike Township. K. Farrell asked whether such comments might be held until the end of the meeting. C. Shearer agreed. S. Tilden asked for clarification regarding the interventions selected and how the communication with the parents will be structured. B. Marra explained that sometimes the communication with the family may be the intervention necessary to motivate the student. R. Burden said that maybe by specifying an exact number of days, there will be more time to work with child in moving that child in the right direction. B. Marra said that the data received from the interventions gives the school the opportunity to see that the child needs assistance and may need to be evaluated for services. He is still relying on the people directly involved with the child to make those decisions rather than articulating a rule that governs the process exactly. K. Farrell indicated that she likes the term 'integrated and focused system' as the whole

concept of RTI is being viewed more as a program in some places than as a process. K. Farrell asked for clarification regarding the evaluation process and whether would apply to non-public schools. B. Marra affirmed that if the Integrated and Focused System of Supports is implemented with fidelity and deemed not effective, yes. The signed consent for the evaluation is sought at the time that you feel the interventions are not effective (and the 15-day timeline begins once you obtain signed parental consent).

511 IAC 7-40-4 Initial educational evaluation; public agency written notice and parental consent

B. Marra said that the only change is the removal of electronic mail reference.

511 IAC 7-40-5 Conducting an initial educational evaluation

B. Marra stated that comments from the forum were considered and the language was changed from 40 instructional days to 45 instructional days, and term 'synthesized' was removed.

511 IAC 7-40-8 Reevaluation

B. Marra said that the change was from 40 instructional days to 45 instructional days.

Rule 41 ELIGIBILITY CRITERIA

B. Marra asked the SAC to review the eligibility criteria and the changes that were made.

511 IAC 7-41-1 Autism Spectrum disorder

K. Farrell questioned whether with regard to Autism Spectrum Disorder (ASD), a student could fall under both ASD and emotional disability. B. Marra said that he understands the question, but that we need to look at the child's individual needs instead of the label.

511 IAC 7-41-2 Blind or low vision

B. Marra asked for comment. No comments were made.

511 IAC 7-41-3 Cognitive disability

R. Kirby said that there were some comments made with regard to the term 'Cognitive disability' instead of 'Mental Disability'. K. Farrell asked if 'cognitive disability' was in the federal definition. B. Marra referred to the federal definition and stated that it was 'Mental Retardation.'

511 IAC 7-41-4 Deaf or hard of hearing

J. Nally referenced J. Crace's comments and asked a question concerning the way the proposed language would read. B. Marra stated that he would prefer to revise the language and then have the SAC review the new language when there is a quorum.

B. Marra asked J. Crace and G. Bates with regard to the term deaf or hard of hearing and deaf blind. S. Knoth said that the feds use Deaf Blindness

511 IAC 7-41-5 Deaf blind

No comments were made

511 IAC 7-41-6 Developmental delay (early childhood)

No comments were made

511 IAC 7-41-7 Emotional disability

No comments were made

511 IAC 7-41-8 Language or speech impairment

No comments were made

511 IAC 7-41-9 Multiple disabilities

B. Marra said that this would apply to a student that would not have a primary disability determined.

511 IAC 7-41-10 Other health impairment

K. Farrell asked if Sec. 10 (a) was in the federal language. S. Knoth said, yes and referred to the federal rule.

511 IAC 7-41-11 Orthopedic impairment

No comments were made.

511 IAC 7-41-12 Specific learning disability

R. Burden asked if there was a way to ensure that the data is being collected for determining a referral. K. Farrell concurred with R. Burden's concerns and referred to (a)(1).

Rule 42 DETERMINATION OF SPECIAL EDUCATION SERVICES

511 IAC 7-42-4 Written notice before case conference committee meetings

B. Marra explained the proposed changes to the language and asked the Council to consider (3) and specified that this could refer to the synthesized report. The comments received were that the language was predetermining the IEP but he indicated that it is a proposal. The federal government requires prior written notice, we are proposing to bifurcate the notice (and many of these requirements can actually be written directly into the student's IEP).

511 IAC 7-42-5 Developing an individualized education program; components and parent copy

B. Marra referred to (c)(2) and Sec. 6. What happens in the IEP is that you have already done 1, 2, and 3 and then 4 and 5 happens at the case conference. What the IEP does not currently contain is the language from Sec. 6 procedural safeguards.

511 IAC 7-42-6 Written notice by the public agency and parental consent

B. Marra explained the added language at (b)(6)(1) and (2) and (3). Also at (l) the language is added if the parent challenges the changes, the current IEP would still be in place not the proposed IEP.

D. Downer said that section (3)(a) looks more like a description of the tools that are used not a description. B. Marra said the language used comes from the federal language. Discussion of how the language should be rewritten ensued. B. Marra stated that this language is already in the current Article 7. G. McAloon said that he feels that this is positive for the parent to have time to review the proposed IEP but feels that the proposed five (5) days should be lengthened so the parent would be able to get with someone to help them better understand the proposal. B. Marra said that the case conference committee may be able to become more streamlined if this rule is being followed. G. Bates asked for clarification on RTI and the 15 days for the RTI report and then 5 days for the parent to review it is really only a 10 day window for the evaluation. The general consensus appears to support lengthening the time allotted for parents to review the proposed IEP.

D. Downer asked for clarification on the timelines if the references should all read instructional days. B. Marra said that yes it should be instructional days.

R. Burden asked for clarification on written notice being received at or after case conferences and procedures that would take place. K. Bassett clarified further that notice at 511 IAC 7-42-4 would take place before notice at 511 IAC 7-42-6. All of the components must be included in the written notice.

B. Marra stated that this language makes it clear that the school cannot move forward without parent consent.

Discussion ensued on different scenarios that may take place after case conference disagreements and the outcomes.

B. Marra said that the language of prior written notice may need to be reviewed.

J. Nally asked for clarification at (j) and (l) if the IEP was 3 years old. B. Marra said that a meeting would need to be requested and he recommended conducting an expedited evaluation but stressed that although the IEP was old, it still had to be implemented as the current IEP.

C. Endres asked for clarification about the procedure under the current rule for situations when a parent was unable to give written consent and gave a living situation as an example. B. Marra said that the School could get approval over the phone and this is why it is important that the school would have to implement the old IEP.

R. Burden indicated that his concern in removing the signature requirement from the process is that some may have the perception that parents are losing their rights, and he feels that there are still some areas that need to have written consent.

K. Farrell thinks that this is a move forward though she does have some concerns with the five days notice and what would have to happen in a manifestation determination conference. G. Bates asked if the language is going above and beyond and if this will be a concern for the State Board. B. Marra said no, the federal government requires prior written notice and we are proposing to bifurcate the notice (and many of these requirements can actually be written directly into the student's IEP).

Article 7 Revisions Comments from Public

Catherine Lee from the Indiana Civil Rights Commission addressed the Council. The research on disparities on referrals for students of color was discussed. Culturally responsive instruction, culturally responsive classroom management and the Black Dialect is a natural language for some students and are areas that

she would like to see addressed under the Integrated and Focused System of Supports.

Loui Lord Nelson from (R.A.I.S.E.) discussed concerns regarding signature. All legal documents require signature, she would like trainings take place to help explain why the signature is not required.

Debra Liebrich from ISD, stated that the verbal or signed systems are referenced under deaf or hard of hearing whereas we state signed languages under language impairments.

Dee Kempson from IDOE, Student Services, addressed the Council regarding the description of actions considered by the public agency.

Terri Waddell Motter from ISD, requested clarification between assessment and evaluation.

BUSINESS

B. Marra said that we have met the required four meetings for the Council. He proposed a May 2008 meeting after the last meeting on December 14, 2007, to review the outcomes of the State Board of Education decisions on the proposed Article 7. Council concurred.

C. Shearer asked how the Children's Social Emotional Behavioral Health Plan will be addressed in Article 7. B. Marra indicated that the items that the State Board has authority over will be addressed in the Integrated and Focused System of Supports section of Article 7.

C. Shearer discussed the issues of Medicaid in schools. B. Marra said that he asking Dr. Reed to send in a letter of support for Medicaid services in schools. B. Marra indicated that it is a funding source that will assist in services for the kids and free up additional funds for the students. D. Downer added that in Indiana when we access Medicaid it does not effect the child's Medicaid benefits, as services provided through Special Ed are considered a 'carve out'.

C. Shearer asked how the Children's Social Emotional Behavioral Plan will be addressed in Article 7. B. Marra indicated that the items that the State Board has authority over will be address in the Integrated and Focused System of Supports section of Article 7.

K. Farrell asked if there was anything to be considered for next week's agenda. B. Marra said that if we have quorum, he would like to have a vote on the rules that were tabled and suggestions for written notice.

The next meeting of the Council will be on Tuesday, October 23, 2007 at Hamilton-Boone-Madison, 400 Guilford Road, Carmel, Indiana. The meeting will begin at 8:30 a.m.

R. Kirby moved to adjourn. Seconded by K. Farrell.

Meeting adjourned at 2:58 p.m.